Completing the Income Tax

By John V. Peters

February 17, 2023

The progressive U.S. income tax began in 1862. The first $600 of income was not taxed. The 2022 equivalent of $600 is $68,000, using the long-term U.S. average inflation rate of 3%.

In 1895 the Supreme Court ruled that the national income tax as implemented violated Article I, Section 9, Paragraph 4 of the Constitution, which says "No capitation, or other direct tax shall be laid unless in proportion to the census or enumeration herein before directed to be taken." This language is obviously highly ambiguous and says nothing directly about an income tax. The Supreme Court, as it usually does, used personal interpretation to pretend that the Constitution was addressing the income tax. An honest ruling would simply say that the Constitution is silent on the question of the income tax.

In 1913 the 16th Amendment to the Constitution was adopted. "The Congress shall have the power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration." An income tax on income was implemented in that year, after the 1895-1912 hiatus.

The highest income bracket tax rate was in effect in 1944 and 1945 with a 94% tax rate on income over $200,000 ($1,950,000 in 2022 dollars).

In 1952 and 1953 the top income bracket tax rate was 92% on income over $200,000 ($1,550,000 in 2022 dollars). In these two years income up to $2,000 ($15,500 in 2022 dollars) was untaxed.

As late as 1981, income over $215,400 ($725,000 in 2022 dollars) was taxed at 70%.

In 2022, income over $539,901 (single or head of household) and over $647,851 (married and filing jointly or a qualifying widow) paid the top tax rate of 37%. No amount of income, however low, was exempt from the income tax in 2022.

Of course, the tax is assessed on adjusted gross income, which may have many exemptions that reduce one's taxable income. As a general rule, the greater your income the more special exemptions Congress provides to you. So, while those with the highest gross incomes seem to face high rates, they may actually pay a lower overall rate than do those with the lowest incomes. Many of the highest earners pay little or no income tax at all. The highest earners rely on the illusion that they pay income tax and at high tax rates.

Ari Glogower, Associate Professor of Law at Ohio State University, in a 2019 article in the Michigan Law Review, outlined an expansion of the income tax to include wealth. His paper "A Constitutional Wealth Tax," suggests converting wealth or net worth into an income annuity for tax purposes. Such an expansion of the income tax would introduce a badly needed dose of fairness into the system and provide the additional revenues needed to reduce the national debt and to meet the urgent needs of the present and future.

Right now, total U.S. wealth is about $141 trillion versus the much smaller $19 trillion of all income. About 25% of all wealth is in property and mostly subject to property taxes. This leaves about $106 trillion of wealth free of tax altogether. This is one of the reasons that wealth inequality continues to grow unchecked.

About 40% of wealth is owned by 1% of households. This is about $56 trillion. The annuity value of $56 trillion, if it were evenly distributed among the top 1% of households, is equal to ($56 trillion x .2) / (1-1.2^-30) = $11.25 trillion. At the current top bracket tax rate of 37% this would generate new revenue of about $4 trillion. But since the income distribution among the top 1% of households is highly skewed toward the top, the actual annual revenues would be much higher than this average calculation indicates, perhaps three times as large. For example, as of January 19, 2023 Bloomberg Billionaires Index rated Elon Musk as the richest American with $135 billion in net

worth. Based on this, his annuity for 2022 would be $27.1 billion and his associated tax would be $10 billion.

The first $50 million of net worth could be designated as exempt from the tax, leaving 99% of all households owing nothing. Only the top 1% of households, numbering 1,312,000 in 2022, would be subject to this tax.

I have used a 20% growth rate for the top 1% of wealth holders and a 30-year annuity term for tax purposes in my calculations.